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UNITED STATES DISTRICT COURT

FOR THE CENTRAL DISTRICT OF CALIFORNIA

CRYSTAL REDICK, an individual,

Plaintiff,

v.

THE ROSE CAFE AND MARKET,
INCORPORATED d/b/a THE ROSE
VENICE, a California corporation;
and DOES 1 to 10, inclusive,

Defendants.

CASE NO.:

COMPLAINT

1. VIOLATIONS OF THE
AMERICANS WITH
DISABILITIES ACT OF 1990, 42
U.S.C. § 12181
2. VIOLATIONS OF THE UNRUH
CIVIL RIGHTS ACT,
CALIFORNIA CIVIL CODE § 51
DEMAND FOR JURY TRIAL

Plaintiff Crystal Redick (hereafter “Plaintiff”) brings this action based upon personal knowledge as to herself and her own acts, and as to all other matters upon information and belief, based upon, *inter alia*, the investigations of her attorneys.

NATURE OF THE ACTION

1. Plaintiff is a visually impaired and legally blind individual who requires screen-reading software to read website content using her computer. Plaintiff uses the terms “blind” or “visually-impaired” to refer to all people with visual impairments who meet the legal definition of blindness in that they have a

1 visual acuity with correction of less than or equal to 20 x 200. Some blind people
2 who meet this definition have limited vision. Others have no vision.

3 2. Plaintiff brings this Complaint to secure redress against THE ROSE
4 CAFE AND MARKET, INCORPORATED d/b/a THE ROSE VENICE (hereafter
5 “Defendant”), and DOES 1-10, for its failure to design, construct, maintain, and
6 operate its website to be fully and equally accessible to and independently usable
7 by Plaintiff. Defendant’s denial of full and equal access to its website, and therefore
8 denial of its products and services offered thereby and in conjunction with its
9 physical location, is a violation of Plaintiff’s rights under the Americans with
10 Disabilities Act (“ADA”) and California’s Unruh Civil Rights Act (“UCRA”).

11 3. Because Defendant’s website, <https://therosevenice.la/> (the “website”
12 or “Defendant’s website”), is not fully or equally accessible to blind and visually
13 impaired consumers in violation of the ADA, Plaintiff seeks a permanent injunction
14 to cause a change in Defendant’s corporate policies, practices, and procedures so
15 that Defendant’s website will become and remain accessible to Plaintiff and other
16 blind and visually impaired consumers.

17 THE PARTIES

18 4. Plaintiff, at all times relevant and as alleged herein, is a resident of the
19 County of Los Angeles. Plaintiff is a legally blind, visually impaired, handicapped
20 person, and a member of a protected class of individuals under the ADA, pursuant
21 to 42 U.S.C. § 12102(1)-(2), and the regulations implementing the ADA set forth
22 at 28 CFR §§ 36.101 *et seq.*

23 5. Defendant is a California corporation with its headquarters in Venice,
24 California. Defendant’s servers for the website are in the United States. Defendant
25 conducts a large amount of its business in California. The physical location where
26 Defendant’s goods and services are sold to the public constitutes a place of public
27 accommodation. Defendant’s restaurant provides to the public important goods and
28 services. Defendant’s website provides consumers access to “an iconic restaurant

1 in the heart of Venice, serving locals and travelers alike since 1979.” Consumers
2 can access information regarding Defendant’s menu, Defendant’s biography, events
3 and catering, Defendant’s blog, contact details, gift cards, Defendant’s online
4 ordering for delivery and pick up, and Defendant’s reservation system. Consumers
5 can also access information regarding Defendant’s newsletter and social media
6 webpages.

7 6. Plaintiff is unaware of the true names, identities, and capacities of each
8 Defendant sued herein as DOES 1 to 10. Plaintiff will seek leave to amend this
9 complaint to allege the true names and capacities of DOES 1 to 10 if and when
10 ascertained. Plaintiff is informed and believes, and thereupon alleges, that each
11 Defendant sued herein as a DOE is legally responsible in some manner for the
12 events and happenings alleged herein and that each Defendant sued herein as a DOE
13 proximately caused injuries and damages to Plaintiff as set forth below.

14 7. Defendant’s restaurant is a public accommodation within the
15 definition of Title III of the ADA, 42 U.S.C. § 12181(7)(B).

16 8. The website provides access to the goods, services, privileges, and
17 advantages of Defendant’s brick-and-mortar location, a place of public
18 accommodation, by allowing consumers to make reservations for Defendant’s
19 restaurant, purchase gift cards, and order online.

20 JURISDICTION AND VENUE

21 9. Defendant is subject to personal jurisdiction in this District. Defendant
22 has been and continues to commit the acts or omissions alleged herein in the Central
23 District of California, that caused injury, and violated rights prescribed by the ADA
24 and UCRA, to Plaintiff. A substantial part of the acts and omissions giving rise to
25 Plaintiff’s claims occurred in the Central District of California. Specifically, on
26 several separate occasions, Plaintiff has been denied the full use and enjoyment of
27 the facilities, goods, and services of Defendant’s website in Los Angeles County.
28 The access barriers Plaintiff has encountered on Defendant’s website have caused

1 a denial of Plaintiff's full and equal access multiple times in the past and now deter
 2 Plaintiff on a regular basis from accessing Defendant's website. Similarly, the
 3 access barriers Plaintiff has encountered on Defendant's website have impeded
 4 Plaintiff's full and equal enjoyment of goods and services offered at Defendant's
 5 brick-and-mortar location.

6 10. This Court also has subject-matter jurisdiction over this action
 7 pursuant to 28 U.S.C. § 1331 and 42 U.S.C. § 12181, as Plaintiff's claims arise
 8 under Title III of the ADA, 42 U.S.C. § 12181, *et seq* and 28 U.S.C. § 1367.

9 11. This Court has personal jurisdiction over Defendant because it
 10 conducts and continues to conduct a substantial and significant amount of business
 11 in the State of California, County of Los Angeles, and because Defendant's
 12 offending website is available across California.

13 12. Venue is proper in the Central District of California pursuant to 28
 14 U.S.C. § 1391 because Plaintiff resides in this District, Defendant conducts and
 15 continues to conduct a substantial and significant amount of business in this District,
 16 Defendant is subject to personal jurisdiction in this District, and a substantial
 17 portion of the conduct complained of herein occurred in this District.

18 13. Defendant owns, operates, and maintains a brick-and-mortar
 19 restaurant location in the State of California. Defendant's brick-and-mortar
 20 location offers goods and services to the public. Defendant also offers the very
 21 goods and services that are offered in Defendant's place of public accommodation
 22 to the public through the website. Defendant's brick-and-mortar restaurant location
 23 is a place of public accommodation pursuant to 42 U.S.C. § 12181(7)(B), and
 24 Defendant's website is subject to the ADA because it provides methods by which
 25 consumers can access the goods and services offered in Defendant's restaurant,
 26 which are inaccessible to Plaintiff, a disabled screen-reader user.

27 **THE AMERICANS WITH DISABILITIES ACT AND THE INTERNET**

28 14. The Internet has become a significant source of information, a portal,

1 and a tool for conducting business, doing everyday activities such as shopping,
2 learning, banking, researching, as well as many other activities for sighted, blind,
3 and visually impaired persons alike.

4 15. In today's tech-savvy world, blind and visually impaired people have
5 the ability to access websites using keyboards in conjunction with screen access
6 software that vocalizes the visual information found on a computer screen. This
7 technology is known as screen-reading software. Screen-reading software is
8 currently the only method a blind or visually impaired person may use to
9 independently access the internet. Unless websites are designed to be read by
10 screen-reading software, blind and visually impaired persons are unable to fully
11 access websites, and the information, products, and services contained thereon.

12 16. Blind and visually impaired users of Windows operating system-
13 enabled computers and devices have several screen-reading software programs
14 available to them. Some of these programs are available for purchase and other
15 programs are available without the user having to purchase the program separately.
16 Job Access With Speech, otherwise known as "JAWS," is currently the most
17 popular, separately purchased and downloaded screen-reading software program
18 available for a Windows computer.

19 17. For screen-reading software to function, the information on a website
20 must be capable of being rendered into text. If the website content is not capable
21 of being rendered into text, the blind or visually impaired user is unable to access
22 the same content available to sighted users.

23 18. The international website standards organization, the World Wide
24 Web Consortium, known throughout the world as W3C, has published Success
25 Criteria for version 2.1 of the Web Content Accessibility Guidelines ("WCAG 2.1"
26 hereinafter). WCAG 2.1 are well-established guidelines for making websites
27 accessible to blind and visually impaired people. These guidelines are adopted,
28 implemented, and followed by most large business entities who want to ensure their

1 websites are accessible to users of screen-reading software programs. Though
 2 WCAG 2.1 has not been formally adopted as the standard for making websites
 3 accessible, it is one of, if not the most, valuable resource for companies to operate,
 4 maintain, and provide a website that is accessible under the ADA to the public.
 5 Plaintiff seeks Defendant comply with WCAG 2.1 as a remedy. Plaintiff does not
 6 premise Defendant's violations of the ADA nor the Unruh Act on violations of
 7 WCAG 2.1. However, the Department of Justice ("DOJ") has issued guidance on
 8 how to make web content accessible to people with disabilities. The DOJ's
 9 guidance provides that: "Existing technical standards provide helpful guidance
 10 concerning how to ensure accessibility of website features. These include [WCAG]
 11 and the Section 508 standards, which the federal government uses for its own
 12 websites."¹ Accordingly, although not a sole basis to premise violations of the ADA
 13 and the Unruh Act on, WCAG "provide helpful guidance concerning how to ensure
 14 accessibility of website features."

15 19. Within this context, the Ninth Circuit has recognized the viability of
 16 ADA claims against commercial website owners/operators with regard to the
 17 accessibility of such websites. *Robles v. Domino's Pizza, LLC*, 913 F.3d 898, 905-
 18 06 (9th Cir. 2019), *cert. denied*, 140 S.Ct. 122, 206 L. Ed. 2d 41 (2019). This is in
 19 addition to the numerous courts that have already recognized such application.

20 20. Each of Defendant's violations of the Americans with Disabilities Act
 21 is likewise a violation of the Unruh Civil Rights Act. Indeed, the Unruh Civil Rights
 22 Act provides that any violation of the ADA constitutes a violation of the Unruh
 23 Civil Rights Act. Cal. Civ. Code § 51(f).

24 **FACTUAL BACKGROUND**

25 21. Defendant offers the website to the public. The website offers features
 26 which should allow all consumers to access the goods and services which Defendant
 27 offers in connection with its physical location. The goods and services offered by
 28

¹ <https://beta.ada.gov/resources/web-guidance/>

1 Defendant include, but are not limited to, the following: reservations, online
2 ordering, gift cards, Defendant's catering and events, Defendant's social media
3 webpages, the brick-and-mortar location and hours of operation, Defendant's
4 contact information, and Defendant's food and drink menus.

5 22. Due to Defendant's failure to properly code its website, Plaintiff has
6 been and is still being denied equal and full access to Defendant's restaurant and
7 the numerous goods, services, and benefits offered to the public through
8 Defendant's website on conjunction with Defendant's brick-and-mortar restaurant.

9 **THE WEBSITE BARRIERS DENY PLAINTIFF ACCESS**

10 23. Plaintiff is a visually impaired and legally blind person, who cannot
11 use a computer without the assistance of screen-reading software. However,
12 Plaintiff is a proficient user of VoiceOver and uses it to access the internet. Plaintiff
13 has visited <https://therosevenice.la/> on July 11, 2022 and July 12, 2022 using the
14 VoiceOver screen-reader. Plaintiff accessed the website on those dates to make
15 reservations.

16 24. During Plaintiff's visits to Defendant's website, Plaintiff encountered
17 multiple access barriers which denied Plaintiff full and equal access to the facilities,
18 goods, and services offered to the public and made available to the public on
19 Defendant's website. For example, Plaintiff who desired to make a reservation,
20 could not as a result of Defendant's coding failures. To give some context, Plaintiff
21 uses her keyboard to navigate websites, as she is not sighted and cannot use a
22 mouse. Thus, in order for Defendant's website to be readable by Plaintiff's screen-
23 reader, Defendant must implement appropriate website coding practices so that the
24 nonvisual elements of Defendant's website can be read aloud by Plaintiff's screen-
25 reader.

26 25. If Defendant had sufficiently coded the website to be readable by
27 Plaintiff's screen-reader and accessible with her keyboard, Plaintiff would have
28 been able to interact with these elements and complete a reservation as a sighted

1 person could.

2 26. Accordingly, Plaintiff was denied the ability to access Defendant's
3 website and make a reservation, a service which Defendant provides through the
4 website in conjunction with its place of public accommodation, its restaurant,
5 because Defendant failed to have the proper procedures in place to ensure that
6 content uploaded to the website contains the proper coding to convey the meaning
7 and structure of the website and the goods and services provided by Defendant.

8 27. Due to the widespread access barriers Plaintiff encountered on
9 Defendant's website, Plaintiff has been deterred from accessing Defendant's
10 website and Defendant's restaurant.

11 28. Despite Plaintiff's attempts to do business with Defendant on its
12 website, the numerous access barriers contained on the website and encountered by
13 Plaintiff, have denied Plaintiff full and equal access to Defendant's website and
14 Defendant's restaurant. Plaintiff, as a result of the barriers on Defendant's website,
15 continues to be deterred from accessing Defendant's website and Defendant's
16 restaurant. Likewise, based on the numerous access barriers Plaintiff has been
17 deterred and impeded from the full and equal enjoyment of goods and services
18 offered in Defendant's restaurant.

19 **DEFENDANT'S WEBSITE HAS A SUFFICIENT NEXUS TO**
20 **DEFENDANT'S RESTAURANT LOCATION TO SUBJECT THE**
21 **WEBSITE TO THE REQUIREMENTS OF THE AMERICANS WITH**
22 **DISABILITIES ACT**

23 29. Defendant's website is subject to the ADA because the goods and
24 services offered on the website are an extension of the goods and services offered
25 in Defendant's brick-and-mortar restaurant. For example, the goods and the
26 services which can be procured online are available for purchase in Defendant's
27 brick-and-mortar restaurant. Thus, since the website facilitates access to the goods
28 and services of a place of public accommodation, the website falls within the

1 protection of the ADA because the website connects customers to the goods and
2 services of Defendant's physical restaurant.

3 **DEFENDANT MUST REMOVE BARRIERS TO ITS WEBSITE**

4 30. Due to the inaccessibility of the Defendant's website, blind and
5 visually impaired customers such as Plaintiff, who need screen-readers, cannot fully
6 and equally use or enjoy the facilities and services Defendant offers to the public
7 on its website. The access barriers Plaintiff has encountered have caused a denial
8 of Plaintiff's full and equal access in the past and now deter Plaintiff on a regular
9 basis from accessing the website.

10 31. These access barriers on Defendant's website have deterred Plaintiff
11 from enjoying the goods and services of Defendant's brick-and-mortar restaurant
12 which are offered through Defendant's website in a full and equal manner to sighted
13 individuals. Plaintiff intends to visit the Defendant's website and restaurant in the
14 near future if Plaintiff could access Defendant's website as a sighted person can.

15 32. If the website were equally accessible to all, Plaintiff could
16 independently navigate the website and complete a desired transaction, as sighted
17 individuals do.

18 33. Plaintiff, through Plaintiff's attempts to use the website, has actual
19 knowledge of the access barriers that make these services inaccessible and
20 independently unusable by blind and visually impaired people.

21 34. The Defendant uses standards, criteria or methods of administration
22 that have the effect of discriminating or perpetuating the discrimination against
23 others, as alleged herein.

24 35. The ADA expressly contemplates the injunctive relief that Plaintiff
25 seeks in this action. In relevant part, the ADA requires:

26 In the case of violations of ... this title, injunctive relief shall include
27 an order to alter facilities to make such facilities readily accessible to
28 and usable by individuals with disabilities Where appropriate,

1 injunctive relief shall also include requiring the ... modification of a
2 policy 42 U.S.C. § 12188(a)(2).

3 36. Because Defendant's website has never been equally accessible, and
4 because Defendant lacks a corporate policy that is reasonably calculated to cause
5 the Defendant's website to become and remain accessible, Plaintiff invokes 42
6 U.S.C. § 12188(a)(2) and seeks a permanent injunction requiring the Defendant to
7 retain a qualified consultant acceptable to Plaintiff to assist Defendant to comply
8 with WCAG 2.1 guidelines for Defendant's website. The website must be
9 accessible for individuals with disabilities who use desktop computers, laptops,
10 tablets, and smartphones. Plaintiff seeks that this permanent injunction require
11 Defendant to cooperate with the agreed-upon consultant to: train Defendant's
12 employees and agents who develop the website on accessibility compliance under
13 the WCAG 2.1 guidelines; regularly check the accessibility of the website under
14 the WCAG 2.1 guidelines; regularly test user accessibility by blind or vision-
15 impaired persons to ensure that the Defendant's website complies under the WCAG
16 2.1 guidelines; and develop an accessibility policy that is clearly disclosed on the
17 Defendant's website, with contact information for users to report accessibility-
18 related problems and require that any third-party vendors who participate on the
19 Defendant's website to be fully accessible to the disabled by conforming with
20 WCAG 2.1.

21 37. If Defendant's website were accessible, Plaintiff could independently
22 access information about the services offered and goods available for online
23 purchase through Defendant's website, complete a reservation, and order online.

24 38. Although Defendant may currently have centralized policies regarding
25 maintaining and operating Defendant's website, Defendant lacks a plan and policy
26 reasonably calculated to make Defendant's website fully and equally accessible to,
27 and independently usable by, blind and other visually impaired consumers.

28 39. Defendant has, upon information and belief, invested substantial sums

1 in developing and maintaining Defendant's website, and Defendant has generated
2 significant revenue from Defendant's website. These amounts are far greater than
3 the associated cost of making Defendant's website equally accessible to visually
4 impaired customers.

5 40. Without injunctive relief, Plaintiff will continue to be unable to
6 independently use Defendant's website, violating her rights.

7 **COUNT I**

8 **VIOLATIONS OF THE AMERICANS WITH DISABILITIES ACT, 42**

9 **U.S.C. § 12181 *ET SEQ.***

10 41. Plaintiff alleges and incorporates herein by reference each and every
11 allegation contained in paragraphs 1 through 40, inclusive, of this Complaint as if
12 set forth fully herein.

13 42. Section 302(a) of Title III of the ADA, 42 U.S.C. § 12181 *et seq.*,
14 provides: "No individual shall be discriminated against on the basis of disability in
15 the full and equal enjoyment of the goods, services, facilities, privileges,
16 advantages, or accommodations of any place of public accommodation by any
17 person who owns, leases (or leases to), or operates a place of public
18 accommodation." 42 U.S.C. § 12182(a).

19 43. Under Section 302(b)(2) of Title III of the ADA, unlawful
20 discrimination also includes, among other things: "a failure to make reasonable
21 modifications in policies, practices, or procedures, when such modifications are
22 necessary to afford such goods, services, facilities, privileges, advantages, or
23 accommodations to individuals with disabilities, unless the entity can demonstrate
24 that making such modifications would fundamentally alter the nature of such goods,
25 services, facilities, privileges, advantages or accommodations"; and "a failure to
26 take such steps as may be necessary to ensure that no individual with a disability is
27 excluded, denied services, segregated or otherwise treated differently than other
28 individuals because of the absence of auxiliary aids and services, unless the entity

1 can demonstrate that taking such steps would fundamentally alter the nature of the
2 good, service, facility, privilege, advantage, or accommodation being offered or
3 would result in an undue burden.” 42 U.S.C. § 12182(b)(2)(A)(ii)-(iii). “A public
4 accommodation shall take those steps that may be necessary to ensure that no
5 individual with a disability is excluded, denied services, segregated or otherwise
6 treated differently than other individuals because of the absence of auxiliary aids
7 and services, unless the public accommodation can demonstrate that taking those
8 steps would fundamentally alter the nature of the goods, services, facilities,
9 privileges, advantages, or accommodations being offered or would result in an
10 undue burden, i.e., significant difficulty or expense.” 28 C.F.R. § 36.303(a). In
11 order to be effective, auxiliary aids and services must be provided in accessible
12 formats, in a timely manner, and in such a way as to protect the privacy and
13 independence of the individual with a disability.” 28 C.F.R. § 36.303(c)(1)(ii).

14 44. Defendant’s location is a “public accommodation” within the meaning
15 of 42 U.S.C. § 12181 *et seq.* Upon information and belief, Defendant generates
16 millions of dollars in revenue from the sale of its amenities and services, privileges,
17 advantages, and accommodations in California through its location, related
18 services, privileges, advantages, and accommodations, and its website,
19 <https://therosevenice.la/>, is a service, privilege, advantage, and accommodation
20 provided by Defendant that is inaccessible to customers who are visually impaired
21 like Plaintiff. This inaccessibility denies visually impaired customers full and equal
22 enjoyment of and access to the facilities and services, privileges, advantages, and
23 accommodations that Defendant makes available to the non-disabled public.
24 Defendant is violating the Americans with Disabilities Act, 42 U.S.C. § 12181 *et*
25 *seq.*, in that Defendant denies visually impaired customers the services, privileges,
26 advantages, and accommodations provided by <https://therosevenice.la/>. These
27 violations are ongoing.

28 45. Pursuant to 42 U.S.C. § 12188 and the remedies, procedures, and rights

1 set forth and incorporated therein, Plaintiff requests relief as set forth below.

2 **COUNT II**

3 **VIOLATIONS OF THE UNRUH CIVIL RIGHTS ACT, CALIFORNIA**

4 **CIVIL CODE § 51 *ET SEQ.***

5 46. Plaintiff alleges and incorporates herein by reference each and every
6 allegation contained in paragraphs 1 through 45, inclusive, of this Complaint as if
7 set forth fully herein.

8 47. Defendant's location is a "business establishment" within the meaning
9 of the California Civil Code § 51 *et seq.* Defendant generates millions of dollars in
10 revenue from the sale of its services in California through its location and related
11 services, and <https://therosevenice.la/> is a service provided by Defendant that is
12 inaccessible to customers who are visually impaired like Plaintiff. This
13 inaccessibility denies visually impaired customers full and equal access to
14 Defendant's facilities and services that Defendant makes available to the non-
15 disabled public. Defendant is violating the Unruh Civil Rights Act, California Civil
16 Code § 51 *et seq.*, in that Defendant is denying visually impaired customers the
17 services provided by <https://therosevenice.la/>. These violations are ongoing.

18 48. Defendant is also violating the Unruh Civil Rights Act, California
19 Civil Code § 51 *et seq.* in that the conduct alleged herein likewise constitutes a
20 violation of various provisions of the ADA, 42 U.S.C. § 12101 *et seq.* Section 51(f)
21 of the California Civil Code provides that a violation of the right of any individual
22 under the ADA shall also constitute a violation of the Unruh Civil Rights Act.

23 49. The actions of Defendant were and are in violation of the Unruh Civil
24 Rights Act, California Civil Code § 51 *et seq.*, and, therefore, Plaintiff is entitled to
25 injunctive relief remedying the discrimination.

26 50. Plaintiff is also entitled to statutory minimum damages pursuant to
27 California Civil Code § 52 for each and every offense.

28 51. Plaintiff is also entitled to reasonable attorneys' fees and costs.

52. Plaintiff is also entitled to a preliminary and permanent injunction enjoining Defendant from violating the Unruh Civil Rights Act, California Civil Code § 51 *et seq.*, and requiring Defendant to take the steps necessary to make <https://therosevenice.la/> readily accessible to and usable by visually impaired individuals.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that the Court enter judgment in her favor and against Defendant as follows:

- A. A preliminary and permanent injunction pursuant to 42 U.S.C. § 12188(a)(1) and (2) and section 52.1 of the California Civil Code enjoining Defendant from violating the Unruh Civil Rights Act and ADA and requiring Defendant to take the steps necessary to make <https://therosevenice.la/> readily accessible to and usable by visually-impaired individuals;
- B. An award of statutory minimum damages of \$4,000 per offense pursuant to section 52(a) of the California Civil Code.
- C. For attorneys' fees and expenses pursuant to California Civil Code §§ 52(a), 52.1(h), and 42 U.S.C. § 12205;
- D. For pre-judgment interest to the extent permitted by law;
- E. For costs of suit; and
- F. For such other and further relief as the Court deems just and proper.

DEMAND FOR JURY TRIAL

Plaintiff, on behalf of herself, hereby demands a jury trial for all claims so triable.

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1 Dated: October 24, 2022

Respectfully Submitted,

2 /s/ Binyamin I. Manoucheri

3 Thiago M. Coelho

4 Binyamin I. Manoucheri

WILSHIRE LAW FIRM

Attorneys for Plaintiff

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